



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TJR

Docket No: 4334-00

14 December 2000



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you reenlisted in the Marine Corps on 7 September 1968 after two years of prior honorable service. Your record reflects that on 4 December 1968 you received nonjudicial punishment (NJP) for absence from your appointed place of duty and wearing an improper uniform. The punishment imposed was reduction to paygrade E-4 and a \$50 forfeiture of pay.

Your record further reflects that on 10 February 1969 you were convicted by special court-martial (SPCM) of a 37 day period of unauthorized absence (UA). You were sentenced to confinement at hard labor for two months, a \$190 forfeiture of pay, and reduction to paygrade E-1.

On 18 December 1969 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for a 61 day period of UA. Your record reflects that prior to submitting this request for discharge, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of

accepting such a discharge. Subsequently, your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 22 January 1970 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, combat service, and awards and medals. The Board also considered your contention that you were promised a promotion and new duty station if you reenlisted. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your misconduct, lengthy periods of UA, and your request for discharge to avoid trial. The Board believed that considerable clemency was extended to you when your request for an undesirable discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for a clemency discharge was granted and should not be permitted to change your discharge now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director